

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PETER J. McDANIELS,
Plaintiff,
v.
BELINDA STEWART, et al.,
Defendant

CASE NO. 3:15-CV-05943-BHS-DWC
REPORT AND RECOMMENDATION
Noting Date: March 4, 2016

The District Court has referred this action, filed pursuant to 42 U.S.C. § 1983, to United States Magistrate Judge David W. Christel. Plaintiff Peter J. McDaniels is presently confined at the Stafford Creek Corrections Center (“SCCC”) and alleges violations of his constitutional rights due to the inadequacy of SCCC provided Halal meals. Dkt. 9 (the “Complaint”). Plaintiff paid the full filing fee on January 27, 2016 and is not proceeding *in forma pauperis* in this matter. *See* Dkt. 12.

At the time Plaintiff filed the Complaint (Dkt. 9), Plaintiff also filed a Motion for Preliminary Injunction (“First Motion for Preliminary Injunction”). Dkt. 10. On February 3, 2016, Plaintiff also filed a pleading titled, “Motion for Declaratory Judgment.” Dkt. 17. Based on the allegations and relief sought, the Court construes Plaintiff’s Motion for Declaratory Judgment as a Second Motion for Preliminary Injunction. *See* Dkt. 17 at 13-21 (“Second Motion

1 for Preliminary Injunction"). As the Court granted Plaintiff's Motion to Combine Preliminary
 2 Injunction and Declaratory Judgment Motion, *see* Dkts. 16 and 24, the Court will address
 3 Plaintiff's First and Second Motions for Preliminary Injunction in this Report and
 4 Recommendation.

5 The Court concludes Plaintiff has not stated a cognizable claim in this case and, as a
 6 result, recommends injunctive relief be denied.

7 **BACKGROUND**

8 Plaintiff alleges his constitutional rights have been violated because the Halal diet he has
 9 been provided is nutritionally inadequate. Dkt. 9. On February 8, 2016, the Court declined to
 10 serve the Complaint but granted Plaintiff leave to file an amended complaint. Dkt. 21. Plaintiff
 11 has until March 8, 2016 to file an amended complaint. *See* Dkt. 21.

12 In the First Motion for Preliminary Injunction, Plaintiff alleges he is being forced by
 13 Defendants to purchase his own meat and entrée food items. *Id.* at 2. Plaintiff requests
 14 Defendants "make a simple substitution, on his current metabolic tray, and give him tuna, halal
 15 and/or Kosher meats, chic peas [sic], cottage cheese, and other foods that are already available."
 16 *Id.* at 9. Plaintiff also requests that no forbidden meat be placed on his tray and that he should
 17 receive vegetable soup when the regular trays are getting "hearty meat soups." *Id.*

18 In the Second Motion for Preliminary Injunction, Plaintiff makes similar requests, and
 19 asks for a therapeutic diet that is free of textured vegetable protein (TVP) and includes less
 20 sodium and carbohydrates from sugar. Dkt. 17 at 5.

21 **DISCUSSION**

22 Under the Prison Litigation Reform Act ("PLRA"),

23 The court shall not grant or approve any prospective relief unless
 24 the court finds that such relief is narrowly drawn, extends no

1 further than necessary to correct the violation of a Federal right,
 2 and is the least intrusive means necessary to correct the violation
 3 of the Federal right. The court shall give substantial weight to any
 4 adverse impact on public safety or the operation of a criminal
 5 justice system caused by the relief.

6 18 U.S.C. § 3626(a)(1)(A).

7 The purpose of preliminary injunctive relief is to preserve the status quo or prevent
 8 irreparable injury pending the resolution of the underlying claim. *Sierra On-line, Inc. v. Phoenix*
 9 *Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). “A plaintiff seeking a preliminary injunction
 10 must establish” (1) “he is likely to succeed on the merits,” (2) “he is likely to suffer irreparable
 11 harm in the absence of preliminary relief,” (3) “the balance of equities tips in his favor,” and (4)
 12 “an injunction is in the public interest.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20,
 13 (2008). The Ninth Circuit also allows for the “serious questions” variation of the test, where “a
 14 preliminary injunction is proper if there are serious questions going to the merits; there is a
 15 likelihood of irreparable injury to the plaintiff; the balance of hardships tips sharply in favor of
 16 the plaintiff; and the injunction is in the public interest.” *Lopez v. Brewer*, 680 F.3d 1068, 1072
 17 (9th Cir. 2012).

18 Here, the Court determined the Complaint failed to state a claim and gave Plaintiff leave
 19 to file an amended complaint. *See* Dkt. 21. Plaintiff has not filed an amended complaint.
 20 Therefore, there is no cognizable claim in this case. Without a cognizable claim, Plaintiff has
 21 failed to show a likelihood of success on the merits or raise serious questions going towards the
 22 merits of this case. Plaintiff, thus, fails to meet the first prong of both tests and Plaintiff’s First
 23 and Second Motions for Preliminary Injunction fail. *See Thompson v. County of Sacramento*
 24 *Animal Control*, 2001 WL 2457709, *3 (D. Hawai’i June 16, 2011) (“the court cannot grant
 injunctive relief where Plaintiffs have failed to state a cognizable claim”).

1 Further, this Court cannot issue an order against individuals who are not parties to the
2 pending suit. *See Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100 (1969). As
3 Plaintiff has not filed an amended complaint, he has failed to show any of the named Defendants
4 are parties to this lawsuit, making injunctive relief improper.

CONCLUSION

6 As Plaintiff has failed to state a cognizable claim in this case, he has not shown a
7 likelihood of success on the merits of the underlying action. Further, he seeks injunctive relief
8 against non-parties. Accordingly, the undersigned recommends Plaintiff's First and Second
9 Motions for Preliminary Injunction (Dkts. 10, 17) be denied without prejudice.

10 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil
11 Procedure, the parties shall have fourteen (14) days from service of this Report to file written
12 objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those
13 objections for purposes of appeal. *Thomas v Arn*, 474 U.S. 140 (1985). Accommodating the time
14 limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on March 4,
15 2016 as noted in the caption.

Dated this 10th day of February, 2016

Ms Christel

David W. Christel
United States Magistrate Judge